IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.2.2005

CORAM

THE HONOURABLE MR JUSTICE V. KANAGARAJ

WRIT PETITION NO.2402 OF 1997

R. Pandian ... Petitioner

Vs.

1. The Presiding Officer
   Labour Court
   Trichy.

2. The Managing Director
   Deeran Chinnamalai Transport
   Corporation, Trichy-1. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief extracted supra.

For Petitioner : Mr. R. Sankarasubbu

For R2 : Mr. R. Parthiban

O R D E R

The writ petition has been filed praying to issue a writ of certiorarified mandamus calling for the records of the award in I.D.No.56 of 1994 dated 30.4.1996 on the file of the first respondent and quash the same as illegal and direct the second respondent to reinstate the petitioner in service with backwages and attendant benefits.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the petitioner is a poor Harijan employed as Conductor in the second respondent Corporation from 1.12.1982 to 13.11.1992 and he was terminated from service illegally on the ground that he did not issue proper tickets and caused a loss of Rs.8.10 paise to the Corporation; that the domestic enquiry was not properly conducted and the Labour Court did not properly appreciate the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence on record in I.D.No.56 of 1994 but instead confirmed the dismissal of the petitioner by the Management and hence the petitioner has come forward with the above writ petition for the relief extracted supra.

3. In the counter affidavit filed by the second respondent, it would submit that on 22.7.1992 while the petitioner was working as Conductor, the petitioner without issuing tickets to two passengers of the value of eighty paise and ninety paise i.e. for a sum of Rs.1.70, gave them only wrappers of the ticket book and when the Ticket Examiner conducted to check it was found out and the conductor recorded statements of witnesses and when the petitioner was asked to countersign the same, he received it and swallowed it; that the said act of the petitioner was witnessed by the driver and other passengers and the driver of the bus gave a statement to that effect and on the basis of the complaint by the Checking Inspector, the petitioner was suspended from 28.7.1992; that a charge memo was issued on 30.7.1992 and after getting his explanation, a retired District Judge Thiru K.S. Narasimhan was appointed as Enquiry Officer and he conducted the enquiry as per law and after affording full opportunity to the petitioner, he was removed from service after second show cause notice; that the approval application was filed before the Labour Court and it was allowed after due consideration and therefore, there is no illegality in the action of the second respondent and the writ petition is liable to be dismissed.

4.During arguments, Mr.Sankarasubbu, learned counsel appearing on behalf of the petitioner would submit that the petitioner is a poor Harijan employed as Conductor in the second respondent Corporation from 1.12.1982; that on 22.7.1992 from Puthanampattu to Main Guard Gate failed to issue proper tickets instead gave a wrapper of 80 paise and 1.25 paise and thereby caused a loss of Rs.1.70 to the Corporation and solely there was a shortage of Rs.8.10 in checking by the Ticket Examiner; that during domestic enquiry proceedings, the management has to prove its case by adducing acceptable evidence; that there is no evidence except the oral testimony of the so called Ticket Examiner, who was naturally inimically disposed of against the workman; that the independent witnesses who were alleged to have been deceived by the workman was not placed before the domestic enquiry;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that it is common knowledge that a common man would aware of the genuine ticket and none would accept the wrapper for ticket; that there must be a document to show that how many persons travelled and how many persons were possessing the ticket at the time of examination and all these facts would not be proved by the sole interested witnesses M.W.1 the Ticket Examiner; that the finding of the Enquiry Officer is perverse and also the finding of the Labour Court equally perverse.

5. Learned counsel appearing on behalf of the petitioner would further submit that no step has been taken to produce those witnesses, who actually received eighty paise and 90 paise instead of tickets; that the entire proceedings is vitiated in law; that the charges 1 and 2 are quite contradictory in nature; that in the domestic enquiry, only one witness Ticket Examiner-M.W.1 has been examined; that the driver and the passengers, who received the wrappers have not been examined; that the Courts cannot take into consideration the xerox copies of the documents produced; that according to the management witness No.1, his statement has been recorded and that man has not been examined and hence, the matter may be remitted back to the respondent for consideration and one more opportunity may be given to the petitioner and reinstate the petitioner into service with backwages and attendant benefits.

6. In support of his submissions, the learned counsel for the petitioner would cite the following decisions:-

i) AIR 1986 S.C.2118 (KASINATH DIKSHITA VS. UNION OF INDIA AND OTHERS)

ii) AIR 2000 S.C. 1151 (U.P. STATE ROAD TRANSPORT CORPORATION VS. MAHESH KUMAR MISHRA)

iii) 1983-2-L.L.J. 232 (WORKMEN, ENGINE VALVES LIMITED VS. ENGINE VALVES LIMITED)

7. Per contra, learned counsel on behalf of the second respondent not only filed the counter but also submitted that instead of issuing tickets, the petitioner has issued only the wrapper. When the Checking Inspector boarded the bus, it was found that there was a deficit of Rs.8.10 paise. Hence, the petitioner was placed under suspension from 28.7.1992 and charge memo dated 30.7.1992 was issued. In the domestic

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

enquiry, the Checking Inspector has been examined as M.W.1 and the documents have been marked; that on the basis of the domestic enquiry, enquiry report was submitted by the Enquiry Officer on 2.9.1992 stating that the charges against the petitioner were proved and the charges were serious and grave in nature, the management came to the conclusion that the petitioner should be dismissed from service and issued a second show cause notice dated 11.9.1992; that the petitioner has submitted an explanation on 19.9.1992; that not satisfied with the same, the management dismissed the petitioner from service on 13.11.1992. By consent of the petitioner, the management marked the xerox copies of the documents; that the petitioner raised an industrial dispute in I.D.No.56 of 1994 and the Labour Court came to the conclusion that the charges were proved and dismissed the petition.

8. Learned counsel for the second respondent would further submit that the Labour Court refused to exercise the discretion under Section 11-A of the Industrial Disputes Act and the Labour Court also came to the conclusion that the enquiry was fair and proper and the workman had not come forward to say before the Labour Court that the enquiry was not fair. With regard to the facts of this case, the misappropriation was done and the petitioner collected money and had not issued the tickets but only the wrappers and the petitioner had also previously committed the same delinquency for more than thirty times and therefore, he would pray this Court to dismiss the above writ petition.

9. In support of his submissions, the learned counsel for the second respondent would cite the following decisions:-

i) 2004(4) SCC 245 (INDIAN OVERSEAS BANK VS. I.O.B.STAFF CANTEEN WORKERS' UNION AND ANOTHER)

ii) 2003(2) L.L.N.642 (V. KASI VS. PANDIAN ROADWAYS CORPORATION LIMITED

iii) 2002(2)L.L.N. 1118 (REGIONAL MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION VS. GHANSHYAN SHARMA)

iv)2001(1) L.L.N. 893 (KARNATAKA STATE ROAD TRANSPORT CORPORATION VS. B.S. HULLIKATTI)

10. So far as the first judgment cited above on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the part of the petitioner reported in (supra)AIR 1986 Supreme Court the Honourable Apex Court while dealing with non supply of copies of statements of the witnesses by the disciplinary authority has remarked that no one facing the departmental enquiry can effectively made the charges unless the copies of the relevant statements and documents to be used against him or made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible? On the other hand, by making available the copies of the documents and statements the disciplinary authority is not running any risk. There is nothing confidential or privileged in it.

11. In the second judgment cited on the part of the petitioners reported in (supra) AIR 2000 Supreme Court 1151 it is held that though all the passengers had been issued tickets only dispute with regard to the point at which they had boarded from the bus for which the punishment of dismissal from service was highly disproportionate. ... It is not that the High Court can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings, if that penalty, shocks the conscience of the Court.

12. In the third judgment cited on the part of the petitioner reported in (supra) 1983 (II) LLJ 232 it is held by the Division Bench of this Court "that when Section 11A had been incorporated with effects from 15.12.197, a Labour Court functioning under the Act, is bound to apply such amendments from time to time, irrespective of any plea raised pertaining to its jurisdiction. Subsequent to the introduction of Section 11A, when a jurisdiction had been conferred on the Tribunal to satisfy itself about the correctness of the finding of misconduct, the Labour Court has to exercise the jurisdiction enjoined upon it under the provisions of the Act. It is not for the workman to plead an incidental and consequential relief made available to him by statute and no management can be heard to plead that a statutory benefit should not be extended to an affected workman.

13. From out of the four judgments cited on the part of the respondent/management the first judgment reported in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(Supra) 2004 (4) Supreme Court 245, the Honourable Apex Court regarding the interference with pure findings of fact has held that re-appreciation of evidence, is impermissible and that High court does not exercise appellate jurisdiction under Article 226 of the Constitution of India. Whether it is insufficient of evidence or that another view is possible, no ground to interfere with the findings of the Industrial Tribunal. Writ Judge could only see if the legally established criteria for grant of relier were satisfied or not.

14. In the second judgment cited (supra) reported in 2003 (2) LLN 642 it is held by a Division Bench of this Court that

> "It is not the amount which has been withheld that is material but it is the conduct which is dishonest that is required to be dealt with. Interference under Section 11A by the Labour Court in cases where such dishonest conduct has been proved would not be justified."

15. In the third judgment cited reported in (supra) 2002 LLN 1118, it is held by the Full Bench of the Honourable Supreme Court: "We agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A, the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when the conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal".

16. In the fourth and the last judgment cited on the part of the second respondent reported in (supra) 2001 (1) LLN 893, wherein it is held by the Honourable Apex Court that while allowing the Special Leave Petition filed by the Road Transport Corporation as against the individual delinquent that 'the principle of resipsa loquitur, namely the facts speak for themselves, is clearly applicable in the instant case.'

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> "It is misplaced sympathy by the Labour Courts in such cases when on checking, it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued ticket of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

16. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known in the given case that the petitioner/delinquent a bus conductor has been dismissed from his service by the second respondent/transport corporation consequent to the domestic enquiry held on the materials placed on record in evidence by the enquiry officer who ultimately found him guilty of the charges of misappropriation of the funds collected without properly issuing tickets to the passengers and it is not the first occasion on which the petitioner has been found guilty of similar offence, but 30 times in the past he had been either admonished or warned or punished with other punishments depending upon the delinquency committed on his part and in this occasion also he was caught red handed by the ticket examiner, who has been examined as M.W.11 and would depose to the actual occurrence in a satisfactory manner and therefore the Enquiry Officer in appreciation of such evidence in the manner required under law pertaining to such domestic enquiry and the disciplinary authority based on the report submitted by the enquiry officer would ultimately award the punishment of dismissal from service.

17. The further relevant case of the petitioner is that he raised an industrial dispute before the Industrial Tribunal and upon a failure report submitted by the Dy. Commissioner of Labour, the first respondent Labour Court,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Tiruchy has been referred with the dispute and the said court also having gone into the facts and circumstances of the case and due opportunity for the petitioner and the 2nd respondent to meet the representation and in appreciation of such evidence placed before him would justify the action of the disciplinary authority and confirm the punishment of dismissal from service and it is this decision of the first respondent is being testified in the above writ petitioner by the petitioner/workman, on such grounds as extracted supra.

18. On the part of the petitioner he would come forward to allege that in the domestic enquiry no proper enquiry was conducted nor adequate opportunity was afforded for him nor the evidence has been properly appreciated by the Labour Court below and barely confirmed the dismissal of the petitioner from the services of the 2nd respondent/management and hence would pray to quash the award passed by the first respondent Labour Court in its I.D.No.56 of 1994 dated 30.4.1996.

19. On the other hand, on the part of the second respondent management, the case of the petitioner would be stoutly defended stating that the petitioner instead of issuing tickets he collected fares from the passengers and he issued only wrappers and it was found by the Checking Inspector and there had been a deficit of a sum of Rs.8.10 and therefore the petitioner was placed under suspension from 28.7.1992 and the charge memo dated 30.7.1992 was issued and on conducting a domestic enquiry based on the evidence of the checking inspector and the documents marked, the Enquiry Officer filed a guilty report on 2.9.1992 stating that the charges against the petitioner were proved and hence the management coming to know that the charges were serious and grave in nature and dismissed the petitioner from his service on issuing a second show cause notice dated 11.9.1992 and on perusal of the explanation of the petitioner filed on 19.9.2992 and thereafter the petitioner had approached the Labour Court.

20. On the part of the petitioner he would come forward to allege that in general, no proper enquiry was conducted either by the disciplinary authority or by the first respondent Labour court and the required documents were not

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

supplied in the manner required under law without even making a specific mention of either the irregularity committed in following the procedure or even the document which has been relied on by the management and therefore this sort of general allegations hurled on the part of the petitioner becomes only liable to be rejected.

21. On a perusal of the award of the Labour Court, this Court is able to find that the Labour Court following the procedures in the manner required under law and following the principles of natural justice has ultimately arrived at the conclusion in full appreciation of the evidence to confirm the guilty finding of the Enquiry Officer and the punishment of dismissal from service for the delinquency of the petitioner and this Court is not able to find any laxity or lacunae or inconsistency either in the conduct of the enquiry by the Enquiry Officer or by the Labour court below or even in the manner the conclusions have been arrived at by the said Court and therefore this Court is not able to see any reason to interfere with the decision of the Labour Court.

22. Regarding the judgments cited on the part of both are very old judgments, would be cited either it is for the inadequate opportunity or for the improper conduct of enquiry by the authorities below without having brought forth any proper material factually connecting the judgments and in fact the petitioner is one, who had, on early occasions, been held guilty not once but 30 times for similar offences avoiding minor punishments and therefore these judgments cited cannot be applied to the case of the petitioner even the point raised that the Labour Court did not consider Section 11-A of the Industrial Disputes Act, 1947 in the conduct of the case has been demolished by the second respondent citing a judgment of the Honourable Apex court to the effect that it is not necessary in such cases to cause interference into the punishment.

23. On the part of the second respondent the judgment submitted are latest and quite fitting to the facts and circumstances of the case and there is no reason to reject any of these judgments and on a overall consideration of the various factors which are involved in this case, this Court is of the firm view that there is no room for this Court to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

cause its interference in any manner either regarding the findings or regarding the punishment and therefore this Court is left with only choice to confirm the award of the Labour Court and hence the following order.

In result,

(i) The writ petition does not merit acceptance but becomes only liable to be dismissed and is dismissed accordingly.

(ii) The award of the Labour Court, Tiruchi made in I.D.No.56 of 1994 dated 30.4.1996 thereby confirming the punishment of dismissal from service of the petitioner is confirmed.

(iii) There shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kb/ks

Copies to:-
The Presiding Officer,
Labour Court, Tiruchi

+1cc to Mr. R. Parthiban, Advocate SR.No.8279

AK(CO)
kaa 14.03.05

WEB COPY

order in
W.P.No.2402 of 1997
21-2-2004

https://hcservices.ecourts.gov.in/hcservices/